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IN THE

Supreme Court of the United States

Jacob Winkelman, a Minor, By and Through His Parents and Legal Guardians, Jeff and Sandee Winkelman, et al.,

Petitioners,

v.

Parma City School District,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE OHIO COALITION FOR THE EDUCATION OF CHILDREN WITH DISABILITIES AND THE AUTISM SOCIETY OF OHIO AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE*[1]

The Ohio Coalition for the Education of Children with Disabilities (Ohio Coalition) is a state-wide, non-profit organization dedicated to advancing the educational interests of children and youth with various kinds of disabilities, including autism, and to providing their parents with information, training, and other resources so that they may act as effective advocates for their children in intervening with school officials and developing effective curricula and individualized education programs (IEPs).

The Ohio Coalition is composed of over forty-four parent and professional organizations representing over 50,000 individuals. It works with the state legislature, the Office of the Governor, and various state agencies on legislative and policy issues of importance to Ohio's parents of children with disabilities in furtherance of its mission of ensuring that high-quality educational programs and services are available to all children with disabilities in Ohio.

Most significantly for this case, the Ohio Coalition also serves as the regional Parent Technical Assistance Center for the parent centers located in nine states throughout the Midwest. The parent centers established by this federally funded project offer training and advocacy resources to parents of children with disabilities. In 2005, the most recent year for which the data have been compiled, the Ohio Coalition provided workshops for training and advocacy services to over 10,700 parents and professionals. In a state in which there are approximately 274,000 school-aged children with disabilities, the Ohio Coalition had direct contact with, and provided services to, over 40,000 parents and professionals.

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[1] This brief is filed with the written consent of all parties. Pursuant to Rule 37.6, no counsel for either party authored this brief in whole or in part, nor did any party make a monetary contribution to the preparation or submission of this brief.

The Autism Society of Ohio (ASO) is a chapter of the Autism Society of America, the largest and oldest parent-based autism organization in the United States with over 100,000 members and supporters and over 200 state and local chapters. ASO is dedicated to increasing public awareness about autism and the day-to-day issues faced by individuals with autism, and advocates statewide for improved services for persons with autism and their families throughout Ohio.

Amici maintain that the Sixth Circuit's erroneous construction of the Individuals with Disabilities Education Act, to prohibit the non-lawyer parents of learning-disabled children from litigating *pro se* their children's claims under the Act in federal court, will have profoundly adverse impacts on the ability of thousands of similarly situated parents to enforce their children's rights, and thus will substantially undermine Congress's intended remedial purposes in enacting the legislation. Because thousands of *amici*'s clients would suffer severe adverse consequences if they did not have the right to advocate *pro se* on behalf of their children in federal court litigation, *amici* have a substantial interest in the outcome of this case.

SUMMARY OF THE ARGUMENT

The question presented by this case is whether parents may proceed *pro se* in litigating claims under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq.[2] The answer to that question turns on the antecedent determination whether parents may litigate such claims in their own right. If parents are proper parties to such litigation, it follows *ipso facto* that they may proceed *pro se*, for not even Respondent contends that Congress intended to take the extraordinary step of stripping parents in cases under the IDEA of the settled right to vindicate one's rights in court without a lawyer.

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[2] This brief cites to the current version of the IDEA, which was reauthorized and amended in 2004.

The text and structure of the IDEA demonstrate that parents in cases such as this one are litigating to pursue their own personal interests. The IDEA grants substantive rights to parents, explicitly stating Congress's intent to protect the rights of both parents and their children; the denial of those rights renders the parents aggrieved parties. The IDEA relieves parents of the legal responsibility to educate their children and the substantial financial burden of carrying out that duty. The extensive statutory rights guaranteed to parents by the IDEA safeguard these significant substantive rights. Accordingly, there was no need for Congress to enact a further statutory provision that "could have expressly allowed non-lawyer parents to proceed *pro se*." *Contra* BIO 13. And contrary to Respondent's assertions, this case does not require this Court to decide whether parents can "proceed *pro se* on behalf of their children." BIO 13.

Parents and children share the IDEA's substantive grant of the right to a free and appropriate public education. Parents, especially those with disabled children, are integrally involved in primary and secondary education, engaging in all aspects of the process to improve their children's education. The data reflects active participation by three quarters of parents in the education of their disabled children, often with the substantial encouragement of the school system. Parents also actively participate in the governance of schools, the development of curricula, and the like. Because no principled line can be drawn between the interests of the parents and those of the child, parent-litigants have the right to advance the rights they share with their children.

Experience also demonstrates that parents are also effective advocates on educational issues in court. *Amici* are directly involved in the training of parents with respect to rights under the IDEA. Their experience has been that parents serve as informed, powerful, and effective advocates on these questions.

ARGUMENT

The Winkelmans' argument in this case does not involve a departure from a supposed "common-law ban on lay representation." *Contra* BIO 10. Parents have substantive rights under the IDEA and thus may litigate their own claims. Moreover, because parents share their children's right to a free and appropriate education, they are empowered to assert these substantive rights. Congress expressly stated its intent to guarantee these rights to parents through the IDEA, seeking to "ensur[e] children with disabilities *and the families of such children* access to a free appropriate public education," 20 U.S.C. § 1400(c)(3) (emphasis added), and to "ensure that the rights of children with disabilities *and parents of such children* are protected." § 1400(d)(1)(B) (emphasis added). Given that parents have standing to proceed in court, it follows that they have the right to proceed *pro se*. *See* 28 U.S.C. § 1654 ("[I]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein").

I. Parents Have Standing to Litigate Their Own Substantive Rights Under the IDEA.

To have standing, a plaintiff must allege "a personal stake in the outcome of the controversy." *Warth v. Seldin*, 422 U.S. 490, 498 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). Contrary to Respondent's position "'that the right of [*sic*] disabled child to a FAPE belongs to the child alone, and is not a right shared jointly with his parents,'" BIO 20 (quoting *Cavanaugh v. Cardinal Local School District*, 409 F.3d 753, 757 (6th Cir. 2005)), parents have a personal right to the free public education for their children guaranteed by the IDEA. The statute provides a complex statutory scheme for parents to protect this right. Moreover, parents have a significant financial interest in the free education for their children guaranteed by the IDEA and

a legal burden to provide such education in the absence of a public education from the state. To protect their own right to a free appropriate education for their eight-year-old son Jacob, who has autism spectrum disorder, Jeff and Sandee Winkelman have individual standing to assert their own legal rights.

A. The Explicit Procedural Rights Guaranteed to Parents by the Act Safeguard Their Substantive Right to a Free Appropriate Public Education for Their Children.

The panoply of procedural rights that Congress explicitly granted to parents shows that parents are proper parties under the Act and have standing to pursue their own substantive rights in court because, when parents hold explicit procedural rights, it makes little sense to say that they have no substantive right to enforcement of the underlying educational grant.

1. Congress intended the reauthorization of the IDEA, with its extensive grant of parental rights, to "support[] all parents by giving more opportunity for them to be active participants in their children's educational experience," 150 CONG. REC. H10,006-01 (daily ed. Nov. 19, 2004) (statement of Rep. Ehlers), and to "giv[e] greater choice and control to parents and local school districts," *id.* (statement of Rep. Regula).

The IDEA explicitly requires that schools give parents "a full explanation of the procedural safeguards" available to them under the Act, including their right to "[s]tate-level appeals" and "civil actions" and the availability of "attorneys' fees." 20 U.S.C. § 1415(d)(2) (J)-(L). The Act's explicit requirement that parents be notified of their right to file civil actions makes clear that Congress intended that they could be "parties aggrieved" under the statute and able to pursue their own substantive interests.

Furthermore, aside from this notice provision, the Act specifically grants parents the opportunity to be heavily

involved in every step of the Act's implementation. First, the IDEA mandates that parents be members of their child's "IEP team," which develops the child's individualized education program (IEP). 20 U.S.C. § 1414(d)(1)(B)(i). Congress thereby sought to ensure that "[p]arents and guardians play a significant role in the IEP process." *Schaffer v. Weast*, 126 S. Ct. 528, 532 (2005). Moreover, parents must be informed about and consent to evaluations of their child. 20 U.S.C. § 1414(c)(3). Parents are also given access to any records relating to their child, and have the right to obtain an "independent educational evaluation of the[ir] child." § 1415(b)(1). The IDEA further requires that parents receive written notification of any changes to, or refusals to change, a child's IEP. § 1415(b)(3).

Congress also granted parents the right, in turn, to pursue remedies if they were dissatisfied with the process or result of their interaction with the school. If parents believe that the IEP offered by their local school district is not appropriate, they have the right to file administrative complaints with regard to their child's "educational placement," § 1415(b)(6)(A), and are entitled to an "impartial due process hearing" to address those complaints, § 1415(f)(1)(A). "Any party aggrieved by the findings and decision" of a due process or administrative hearing "shall have the right to bring a civil action with respect to the complaint" in state or federal court. § 1415(i)(2)(A). If the school has failed to offer a free appropriate education to the child, "a court or a hearing officer may require the agency to reimburse the parents" for private educational services sought out by the parents. § 1412(a)(10)(C)(ii).

Not only does the IDEA grant rights to parents, it also explicitly authorizes parents to advocate on behalf of their children at every level of this administrative process. Although the IDEA allows parents to be accompanied by counsel at due process hearings, parents may proceed *pro se* or be accompanied by non-attorney "individuals with special

knowledge or training with respect to the problems of children with disabilities." § 1415(h)(1). In fact, at the time relevant to this case, parents were affirmatively discouraged from having counsel attend IEP meetings. *See* 34 C.F.R. pt. 300, App. A ("The presence of the agency's attorney could contribute to a potentially adversarial atmosphere at the meeting. The same is true with regard to the presence of an attorney accompanying the parents at an IEP meeting." (answer to question 29)) (as effective prior to Oct. 13, 2006). Thus, as Respondent must acknowledge, "the IDEA allows parents to represent their children *pro se* during administrative proceedings," BIO 17, and there is no basis for concluding that Congress intended to adopt a much more restrictive role – under which parents would not be able to represent themselves to pursue their own interests under the statute – in court.

2. Procedural and substantive rights under the IDEA go hand in hand; given that parents hold such extensive procedural rights, they therefore must hold a corresponding substantive right to the underlying educational grant. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07 (1982), the Court recognized as much in defining the substantive right to a FAPE as including "State compli[ance] with the [IEP] procedures set forth in the [EHA]," as well as an IEP "reasonably calculated to enable the child to receive educational benefits." *See also* BIO 22 n.18. By acknowledging that the state's obligation to provide a FAPE cannot be met without properly complying with the procedural requirements of the IDEA, the Court recognized that procedural and substantive rights under the IDEA are effectively one and the same.

This case arises from the Winkelmans' effort to invoke their rights under the IDEA to secure appropriate educational services for their son Jacob. The Winkelmans worked diligently and successfully with Respondent as part of

Jacob's IEP team for two years until the 2003-2004 school year, when Respondent proposed moving Jacob from his placement at the Achievement Center for Children, a private preschool specializing in educating children with autism, to a regular elementary school special education class. Pet. App. 4a-5a. Because the Winkelmans were troubled that the new plan excluded many services they regarded as necessary for Jacob's education, they requested a due process hearing to address Respondent's proposed IEP. *Id.* at 5a. When the Impartial Hearing Officer rejected the Winkelmans' complaint, the parents appealed to the State Level Review Office. *Id.* at 6a. Again unsuccessful, the Winkelmans exercised their statutory right to challenge the decision in federal court. *Id.* After the Northern District of Ohio granted judgment on the pleadings for Respondent, the parents appealed to the U.S. Court of Appeals for the Sixth Circuit, which summarily dismissed the suit because of the Winkelmans' status as *pro se* litigants. *Id.* at 1a-2a, 23a.

Accordingly, because the Winkelmans have consistently pursued their own procedural rights under the IDEA and sought to protect the educational interests of their son Jacob, it makes little sense to hold that the Winkelmans do not also have rights with respect to the underlying FAPE and thus cannot continue to advance their rights in court.

This reading of the statute is bolstered by the fact that none of the provisions of the IDEA regarding the right of parents to seek relief in administrative or judicial hearings distinguish between substantive and procedural rights. The phrase "part[ies] aggrieved," 20 U.S.C. § 1415(i)(2)(A), does not create categories of procedural and substantive claims, and parties may be equally "aggrieved" by substantive or procedural harms, *see generally FEC v. Akins*, 524 U.S. 11, 19 (1998) ("History associates the word 'aggrieved' with a congressional intent to cast the standing net broadly . . .."). No matter whether the result of procedural or substantive violations, this case is about Respondent's denial of

educational services necessary to Jacob's educational development and the resulting cost that his parents must bear to correct this deficiency.

B. The IDEA Provides a Substantive Right to Parents By Relieving Them of the Legal Obligation and Considerable Costs of Educating Their Children.

The IDEA furthermore confers substantive rights upon parents such as the Winkelmans by explicitly assisting them with the disproportionate financial burden of educating children with disabilities. Parents have a common law and statutory obligation to provide for the education of their children. The financial relief thus granted is considerable in light of the extensive costs of obtaining private specialized education for children with disabilities.

Under the common law, and today in the context of public education, parents have always borne the "high duty[] to recognize and prepare [the child] for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). Blackstone stated that it is the "duty of parents to their children [to give] them an education suitable to their station in life: a duty pointed out by reason, and of far the greatest importance of any." 1 WILLIAM BLACKSTONE, COMMENTARIES *451. The highest courts of several states have also recognized this common law duty. For example, the New Jersey Supreme Court held that the common law "duties of protection and education" rest upon both parents. *Osborn v. Allen*, 26 N.J.L. 388 (N.J. 1857); *see also Haase v. Roehrscheid*, 6 Ind. 66 (1854) ("It is the duty of a father to support and educate his minor children . . ..").

Many states subsequently enacted statutes, "reflective of the common law," that require each parent to provide for the "child's support, care, nurture, welfare, and education." *Middleton v. Middleton*, 620 A.2d 1363, 1366 (Md. 1993) (citing MD. CODE ANN., FAM. LAW § 5-203(b)(1) (1991)). This Court noted that it is the "natural duty of the parent to give his children education suitable to their station in life,"

and that this obligation is enforced "in nearly all the States . . . by compulsory laws." *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). Even after states assumed some of the financial burden of parents by providing a public education for every child, parents still retained the ultimate obligation of ensuring their child is educated.[3] Notably, even if Jacob Winkelman were excluded from public schools, Ohio law "still imposes the duty upon [his parents] to give [Jacob] a proper education, and on [their] failure to do so [they] may be prosecuted . . . for such neglect." *In re Hargy*, 23 Ohio N.P. (n.s.) 129 (Ohio C.P. 1920).

Given that the parental duty to educate has not been displaced by modern public education, it is clear that parents have an interest in being relieved of this burden. Accordingly, the free appropriate education granted by the IDEA is best understood as a substantive grant to parents that gives them rights under the Act. By granting a "free appropriate public education" to children with disabilities, 20 U.S.C. § 1412(a)(1)(A), the IDEA explicitly assists parents such as the Winkelmans with fulfilling their duty to educate their children with disabilities and frees them from the substantial financial burden they would otherwise personally carry. When a school district proposes an unsatisfactory IEP, it is the parents of the child who must bear the financial burden of providing educational alternatives or supplements to ensure their child has an appropriate education. For the Winkelmans, this meant obtaining private instruction for Jacob at the costly Monarch School to meet his

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[3] *See, e.g.*, OHIO REV. CODE ANN. § 3321.38 ("If the juvenile court adjudicates the child as . . . an habitual or chronic truant . . . any subsequent adjudication of that nature involving the child may result in a criminal charge against the parent . . . ."); N.Y. EDUC. LAW § 3212 (stating that parents can lose custody of their children for "educational neglect"). *See generally* Anne C. Dailey, *Developing Citizens*, 91 IOWA L. REV. 431, 440 (2006) (noting that by 1918 all fifty states had compulsory education laws).

individualized needs that were not appropriately addressed by Respondent's proposed IEP.[4]

The direct grant of financial relief to parents is referenced several times in the IDEA. The Solicitor General, citing this extensive statutory scheme, has noted that "[t]he language of IDEA confirms that Congress viewed the right to a free appropriate public education as one held jointly by parents and their child." Cert. Br. for the U.S. as *Amicus Curiae*, No. 05-983, at 12. When a school district has failed to provide a free appropriate public education and parents have enrolled their children in private school, "a court or a hearing officer may require the agency to reimburse the parents." 20 U.S.C. § 1412(a)(10)(C)(ii). Likewise, the IDEA defines "special education," a component of a free appropriate public education, as "specially designed instruction, *at no cost to parents*, to meet the unique needs of a child with a disability." 20 U.S.C. § 1401(29) (emphasis added). Congress recognized that, under the IDEA, "[o]ver six million children with disabilities are no longer limited by their families' ability to afford private education." 149 CONG. REC. H3458, H3479 (daily ed. Apr. 30, 2003) (statement of Rep. Kind).

This substantive relief granted to parents by the Act confers upon them a substantial financial interest in the Act's enforcement. The considerable cost of educating a disabled child was an important impetus behind the IDEA, as there "was a general recognition that to educate a special needs child, it was going to cost effectively double what it costs to normally educate a child in this country." 150 CONG. REC. S5250-02, S5331-02 (daily ed. May 12, 2004) (statement of Sen. Kennedy). In fact, this prediction underestimated the

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[4] Due to the school's prohibitive cost, the parents have since been required to homeschool Jacob, with one to two hours per week of supplemental instruction provided by the Monarch School.

financial burden on parents in the absence of the IDEA, as private education for children with disabilities costs nearly eight times as much as regular private education. *See* Pet. App. 5a (noting that Monarch School's annual tuition is $56,000).[5] For the Winkelmans, the right to a free education relieves them of the potentially overwhelming cost of enrolling their child in an appropriate private school, which in Ohio ranges from the Monarch School's $56,000 annual tuition to the Cleveland Clinic Center for Autism's $59,000 annual cost.[6]

Indeed, given Congress's expressed interest in relieving parents of tuition costs, it would be inconsistent with the statutory design to read the Act as burdening them with the

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[5] These costs are particularly weighty for parents of children with disabilities, who already face costs two to three times more than those faced by parents raising a non-disabled child. *See* Madeleine Brindley, *High Cost for a Family Raising a Disabled Child*, WESTERN MAIL, July 7, 2005, http://icwales.icnetwork.co.uk/0100news/health/tm_objectid=15708313&method=full&siteid=50082-name_page.html; Anne E. Kazak & Robert S. Marvin, *Differences, Difficulties and Adaptation: Stress and Social Networks in Families with a Handicapped Child*, 33 FAMILY RELATIONS 67, 71 (1984) (noting that in a study of families with a child having spina bifida the mean income was $17,900 for families including a disabled child, compared with $29,500 for families without a disabled child); SALLY BALDWIN, THE COSTS OF CARING: FAMILIES WITH DISABLED CHILDREN 55-56 (Kathleen Jones ed., 1985) (noting that in one study one-hundred percent of surveyed families with children with disabilities reported extra cost due to the disability).

[6] According to the National Association of Private Special Education Centers, these two schools are the only options for parents of autistic children in Ohio. NAPSEC Member Programs Listed by City & State, *at* http://www.napsec.org/statememberslist.html (last visited December 15, 2006); E-mail from Travis Haycock, Assistant Director of the Cleveland Clinic Center for Autism (Nov. 20, 2006, 12:01:30 PM PST) (on file with author).

substantial further cost of paying legal counsel to protect their right to a free education for their children. The cost of an attorney for an IDEA appeal could run anywhere from $35,000 to $100,000. *See* Charles Adamson, *Parents Take on School Districts with Legal Challenges*, http://www.autism-law.com/news.htm#2 (describing an IDEA appeal in which the parents' attorneys' fees amounted to $100,000); *see also* Ruggero J. Aldisert, *Tribute to Dean Mark A. Nordenberg: Goodbye Dean, and Welcome Back, Provost-Professor*, 54 U. PITT. L. REV. 951, 953 (1993) ("[t]he costs of prosecuting or defending a rather straightforward civil claim – generating attorneys fees of $ 35,000 to $ 50,000 – are beyond the means of the average family or small business"). The cost of counsel in many cases cannot be overcome by the hypothetical prospect that, in a few instances, "children may qualify for court-appointed counsel" or "low-cost or *pro bono* legal services may be available." *Contra* BIO 18. *See* Pet. 14-16; Cert. Br. for the Autism Society of America et al. as *Amicus Curiae*, No. 05-983, at 7-9; Cert. Br. for the Council of Parent Attorneys and Advocates, Inc., et al. as *Amicus Curiae*, No. 05-983, at 9-12. It would be anomalous to read the IDEA – which grants parents a reprieve from thousands of dollars of tuition costs – as requiring them to pay as much to defend that right.

II. The Educational Interests of Parents and Their Children Are Inextricably Intertwined.

Not only do parents have individual standing to advance their own claims, but their rights are inextricably intertwined with those of their children. To improve the education of their children, parents are heavily involved in and retain control over considerable parts of their children's education. This is especially true for parents of children with disabilities, whose involvement in and dedication to their children's education is even higher than that of the general population. Given the intertwined nature of the rights of parents to have their children educated and the rights of

children to be educated, parents have the right to advance these shared interests in court.

To improve the educational opportunities of their children, parents – especially those of children with disabilities – are heavily invested in their children's schooling. Parents also have a constitutional right to control and influence the education of their children. *Pierce v. Society of Sisters*, 268 U.S. 510, 536 (1925). Furthermore, Congress has repeatedly recognized the importance of parental involvement and thus given parents outlets for exercising their right even in the context of public education. In practice, primary and secondary education in this country is heavily influenced by parents of schoolchildren, who dominate school boards, comment on curricula, and participate at high rates in all aspects of their children's education. The fact that parents are so involved, and that policymakers see such involvement as crucial to meeting educational goals, highlights the necessarily intertwined nature of the educational rights of parents and children. Given that the rights of parents under the IDEA are shared, parents have third-party standing to litigate the claims they share with their children.

To improve their children's opportunities, parents invest an extraordinary amount of time and energy shaping their children's educations and exercising their legal rights to control the process. Parents of children with disabilities, like the Winkelmans, devote even more time than the average parent educating their children at home and working to develop the details of their individualized education plans. Given this degree of involvement, it is impossible to disentangle the educational rights of children from those shared by their parents, particularly with respect to the families whose rights are protected by the IDEA.

Parents of children with disabilities display exceptionally high levels of involvement in every facet of primary and secondary education. Eighty percent report regularly talking

with their children about school, seventy-six percent help with homework at least once a week, and twenty-one percent provide homework assistance five or more times a week. Lynn Newman, *Research Digest: Family Involvement in the Education of Secondary-School-Age Students With Disabilities*, FINE NETWORK: HARVARD FAMILY RESEARCH PROJECT (2005), http://www.gse.harvard.edu/hfrp/projects/fine/resources/digest/disabilities.html. Nearly all parents of children with disabilities (ninety-three percent) attend school activities, such as back-to-school nights, PTA meetings, conferences, class activities, or volunteering; seventy-seven percent of these parents have attended school meetings, seventy-three percent have attended parent-teacher conferences, and sixty-two percent report attending school or class events. *Id.* They do this not for their own gratification, but to ensure the educational success of their children.

Notably, with respect to the individualized education plans expressly provided by the IDEA, parental participation is striking, with "[n]early 9 out of 10 parents of secondary-school-age students with disabilities (88%) report[ing] participat[ion] in at least one IEP meeting in the current or prior school year." *Id.* Moreover, a majority of families "report being involved in developing IEP goals" and one-third wanted to be "more involved" in decisions about their children's IEP. *Id.* Here, the Winkelmans likewise worked diligently and successfully with Respondent for years as part of Jacob's IEP team prior to the events leading to this suit.

Parents of children with disabilities are even more involved in public education than the very involved average parent. "Compared with their peers in the general population, families of students with disabilities are more involved in monitoring and assisting with homework, and they are as involved, and at times more involved, in school-based activities . . .. Families of students with disabilities also are more likely to attend general school meetings and parent-teacher conferences than those in the general

population." NATIONAL LONGITUDINAL TRANSITION STUDY-2, FAMILY INVOLVEMENT IN THE EDUCATIONAL DEVELOPMENT OF YOUTH WITH DISABILITIES 86 (2005), *available at* http://www.nlts2.org/reports/2005_03/nlts2_report_2005_03_complete.pdf. Specifically, parents of children with disabilities are five times as likely as parents in the general population to help with homework on a regular basis. *Id.* at 24. These levels of involvement are even more striking considering that families of students with disabilities are more likely to have single-parent households, lower family income, and lower parental education levels – all variables typically associated with lower levels of parental involvement. *Id.* at 86.

These numbers are all the more remarkable when viewed in light of the already high average of all parents in primary and secondary education. According to the NCES, the vast majority of parents are engaged in critical aspects of primary and secondary schooling to improve the educational outcomes of their dependent children. NCES, Parental and Family Involvement in Education Report, 2002-03. In 2003, eighty-eight percent of parents attended a general school meeting; seventy-seven percent attended a school or class event; forty-two percent volunteered or served on a school committee; and sixty-two percent participated in school fundraising. *Id.* at 11. Moreover, parents are integrally involved in facilitating the academic success of their children in school and ensuring that their children fully benefit from public education. Of children in kindergarten through twelfth grade, ninety-five percent had parents who reported assisting with homework; eighty-five percent had parents who reported that an adult checked to ensure homework was completed; and ninety percent of students had a place in their homes set aside for doing homework. *Id.* at 19. Furthermore, parents read to their children at least once a week in nine out of ten homes with students in kindergarten through third grade. *Id.* Parents even provide financial

support for their children's public schooling, with seventy-nine percent of parents reporting that they have been asked to fund items and needs – including paper, cleaning supplies, transportation, technology, teacher salaries, and educational curricula – that had previously been covered by school budgets. PTA National Public Opinion Poll on Education Funding, National PTA 2004 Annual Report 12.

To improve their children's educational outcomes, parents not only engage at every level of their children's education, but also dominate school governance. In the United States, almost *all* school board members are parents (ninety-six percent), and about half (48.9%) have children currently in school. Frederick M. Hess, National School Board Association, School Boards at the Dawn of the 21st Century: Conditions and Challenges of District Governance 28 (2002), *available at* http://www.nsba.org/bookreports/SBDawn21stCent.pdf. School districts are governed primarily by parents, not educators: only thirteen percent of school board members report a professional background in education. *Id.* at 26. Moreover, the "vast majority of school boards are financially independent from the general city or county government," leaving parents with complete control over the direction and structure of children's education. *Id.* at 30. In fact, "just 15 percent of boards need the municipal government to approve their budget and just 17 percent need it to approve a proposed bond issue." *Id.* (internal table references omitted).

These exceptionally high levels of parental involvement reflect the fact that parents have always had the legal right to control the education of their child: "those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). In *Pierce*, the Court held that "forcing [children] to accept instruction from public teachers only," *id.*, "unreasonably interferes with the liberty of parents and

guardians to direct the upbringing and education of children," *id.* at 534. The IDEA's procedural provisions, *see* 20 U.S.C. § 1415, which are directed specifically toward parents of children with disabilities, build upon this liberty of educational control that is vested in parents under the Constitution. From this baseline of parental control it becomes clear that the IDEA not only accepts the historically intertwined nature of the educational rights of parents and children, but also furthers this relationship by granting parents new procedural avenues through which they may exercise control while enjoying a publicly funded education. Because the IDEA perpetuates and works within this longstanding framework of parental rights, this Court should not attribute to Congress an intent to create an artificial distinction between the educational rights of the children and rights of the parents under the Act.

Recognizing the critical role of parents in the success of the IDEA, Congress also provided for the creation of parent training and information centers to ensure that children "meet developmental and functional goals, and challenging academic achievement goals . . . and [are] prepared to lead productive independent adult lives." 20 U.S.C. § 1471(b)(1). In addition to the IDEA, Congress enacted the Goals 2000: Educate America Act to "provide a framework for meeting the National Education Goals," 20 U.S.C. § 5801, one of which was that "[b]y the year 2000, every school [would] promote partnerships that [would] increase parental involvement and participation in promoting the social, emotional, and academic growth of children," *id.* § 5812(8)(A). Similarly, under the Improving America's Schools Act of 1994, Congress required educational agencies to "implement[] programs, activities, and procedures for the involvement of parents" in order to receive federal educational funds. Pub. L. No. 103-382, § 1118, 108 Stat. 3518, 3550. This condition on the receipt of federal funds was recodified and amended at 20 U.S.C. § 6318 under the

No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 1118, 115 Stat. 1425 (2002), which requires states through "separate measurable annual objectives" to ensure "continuous and substantial academic improvement" for all students, including "students with disabilities." *Id.* § 6311(b)(2)(C)(v). To achieve these measurable objectives, Congress recognized the need to ensure that schools "afford[] parents substantial and meaningful opportunities to participate in the education of their children." *Id.* § 6301(12).

School districts across the country recognize the importance of high levels of parental involvement to the success of public education and have established policies to encourage parents to participate. One study found that over ninety percent of surveyed districts in fifteen states reported having at least one formal policy in place to encourage parents to get involved in their child's education. Susan L. Kessler-Sklar & Amy J. L. Baker, *School District Parent Involvement Policies and Programs*, 101 Elem. Sch. J. 101 (2000) (reporting the results of a survey of superintendents of two hundred school districts in fifteen states regarding the adoption of six common types of parent involvement policies). The study found that 79.9% of responding districts had adopted policies to facilitate communication with parents about their child's academic performance and that 73.3% of districts had policies that provided parents with the power to help make decisions about school policies or practices. *Id.* School boards regularly reach out to parents directly. For example, forty-eight percent of districts hold open forums for parents/community members to discuss student achievement goals, Hess, *supra*, at 14; 57.8% provide formal opportunities for community input into the curriculum, *id.* at 15; and 94.3% consider "parental satisfaction" to be important in assessing superintendent performance, *id.* at 23.

Policies and programs in place in school districts across the nation bear out these statistics and demonstrate that

schools recognize the need to have parents involved in the education of their children. Respondent's school board policy, for example, states that "[a]ll parents/guardians of students enrolled in the District are encouraged to take an active role in the education of their children." Parma City Sch. Dist. Bd. Pol'y Manual, No. 2111, *available at* http://www.parmacityschools.org/board/policies/upload/Full Manual.pdf. Similarly, in the Houston Independent School District, parents are considered to be "full partners in a child's education." Houston Indep. Sch. Dist., *Parent Rights and Responsibilities Handbook*, *available at* http://www.houstonisd.org/67806986/images/PRR_Brochure .pdf.

School districts often encourage parents to participate in school board meetings and other community forum events so that parents' voices can be heard in the district-wide policy-making process. In Respondent's district, the school board adopted policies to "authorize and encourage . . . constructive cooperation with parents and community groups." Parma City Sch. Dist. Bd. Pol'y Manual, No. 2132, *available at* http://www.parmacityschools.org/board/policies/upload/Full Manual.pdf. Likewise, the Los Angeles Board of Education "hold[s] semi-annual town hall style forums at school sites to enable citizens to participate in the policy making process, allow greater interaction with parents, and discuss and review timely issues affecting the [school district]." Los Angeles Unified Sch. Dist. Bd. Rules, No. 26, at 12, *available at* http://www.lausd.k12.ca.us/lausd/board/secretary/html/ BoardRules11-1-06.pdf.

Several districts have also established formal advisory committees composed of parent and community representatives who participate in each school's decision making process. For example, the New York School Board established "Community Education Councils," each "consist[ing] of 11 voting members who serve two-year terms, and one non-voting student member who serves a one-

year term." New York City Dep't of Educ., Community Education Councils, *at* http://docs.nycenet.edu/docushare/dsweb/Get/Document-87/D-140.pdf. Of the twelve members on each Council, "[n]ine of the voting members must be parents of children attending a school in the community school district." *Id.* Similarly, the Los Angeles School Board established a "School-Community Council" for each school. Los Angeles Unified Sch. Dist. Bd. Rules, No. 1370, at 81, *available at* http://www.lausd.k12.ca.us/lausd/board/secretary/html/BoardRules11-1-06.pdf. Members of these councils "participate in decision making by advising the principal in matters pertaining to the local school and its educational program," and parents must comprise a majority of members on each council. *Id.* Many districts also grant parents broad rights to control the instructional materials to which their children are exposed. In Respondent's district, school board policy states that "[n]o student shall be required to participate in such activities if they are contrary to the convictions of the student or his/her parents or guardians." Parma City Sch. Dist. Bd. Pol'y Manual, No. 2240, *available at* http://www.parmacityschools.org/board/policies/upload/FullManual.pdf. Parents can review "program lessons and/or [instructional] materials" and "file[] a complaint . . . regarding either the content or activities," stating that they "conflict with his/her religious beliefs or value system." *Id.* "[T]he school will [then] honor a written request for his/her child to be excused from a particular class for [those] specified reasons." *Id.* In Houston, parents similarly have the right "[t]o examine the curriculum materials of the classes in which their children are enrolled." Houston Indep. Sch. Dist., *supra.*

In addition, school districts are increasingly reaching out to parents by offering training in how to effectively get involved in their child's education. In Stockton, California, the school district set up a Parent Resource Center that trains parents to participate in their children's educations. *See*

Adriana Khoo, *Schools That Welcome Parents: How Schools Can Reach Out to Parents and Create Ways for Them to Participate*, Child Advocate, Jan.-Feb. 2001, *available at* http://www.4children.org/news/101sche.htm. Similarly, in San Diego, the school district provides classes designed to prepare parents "to work with school staff to support their children's learning." San Diego Parent University: Parents Helping Children Learn, http://www.sandi.net/parent/parent.univ/who.htm. The Chicago Public School District also provides open workshops for parents on topics such as motivating students, and the "hows and whys" of parent involvement. Chicago Public Schools Parent Community Partnership Workshops, http://www.cps.k12.il.us/Parent/PCP/programs.html#workshops. The widespread adoption of these policies and programs demonstrates that school districts acknowledge that parents have a right to guide the education of their children and highlights that educational rights are shared.

Given that parent-run school boards establish curricula, hire faculty, facilitate student achievement, direct funding, and provide special education, it makes little sense to speak of a child's right to a public education independent of her parents' shared rights. Parents are embedded in primary and secondary schooling in this country to such an extent that Congress could not have meant to provide dependent children with a right to a free appropriate public education, while excluding parents from sharing in that basic right. Because the Winkelmans and their son Jacob share the right to a free and appropriate public education, they have standing to advance their challenges against Respondent's proposed IEP.

III. Parents Receiving Specialized Training in IDEA Have Proven to Be Powerful, Effective and Successful Advocates for Their Children's Rights to an Appropriate Public Education.

Throughout the country, state and local agencies similar *to* amicus Ohio Coalition regularly conduct in-depth training programs for parents of children with disabilities, including the estimated 6500 school-age children with autism in Ohio alone, to familiarize parents with the rights and responsibilities pertaining to them and their children, and with the processes, resources, and remedies available to them under IDEA.

The Ohio Coalition directly serves over 31,000 parents among fourteen federal disability categories on an annual basis. In 2005, the most recent year for which data are available, its two Parent Training and Information Projects provided training to over 2500 parents on IDEA specifically and to an additional 4100 parents on more specialized topics.

In 2005, the Ohio Coalition disseminated information to over 715,000 parents, professionals, and members of the public regarding disability issues. In addition, the Project trains parents on IDEA's requirements and processes throughout all eighty-eight counties and 613 school districts in Ohio and services twenty other parent centers in nine Midwest states. Parents receive detailed instruction and training to understand the importance of early intervention, evaluation and implementation of IEPs, to build their knowledge base in IDEA and the rights and procedures it provides, and to learn to advocate effectively on behalf of their children.

ASO complements the eight local chapters of the Autism Society of America in Ohio in providing parent support groups and local training for parents. ASO also sponsors a biannual conference that includes training in parent advocacy.

As a result of such training programs, the experience of agencies like the Ohio Coalition and ASO is that parents who receive such training have become informed, powerful, and effective representatives, and have been overwhelmingly successful in advocating to ensure that the requirements of

IDEA are being followed and that appropriate special educational services are being provided for the benefit of their disabled sons and daughters. Indeed, because of the specialized knowledge such parents acquire, they are usually better able to represent their children's interests and rights under IDEA in dealing with school officials than professional advocates such as attorneys.

The experience of these agencies demonstrates that parents who receive such in-depth training should be just as effective and successful in advocating for rights under IDEA in federal court litigation as in communications with school officials or due process hearings with state education agencies that display certain of the attributes and formalities of litigation. There is no evidence in the data or supported by the experience of these agencies that parents as a group would be less efficient or effective in litigating under IDEA than other *pro se* litigants in federal court. To the contrary, parents who have received training to act as advocates for their children's rights in other settings should be expected to be extraordinarily powerful, effective, and successful *pro se* litigants in this context. It makes no sense to allow *pro se* litigation in the one context and not in the other – particularly when the education of children with disabilities is implicated.

CONCLUSION

For the foregoing reasons, the judgment of the Sixth Circuit should be reversed.

Respectfully submitted,

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